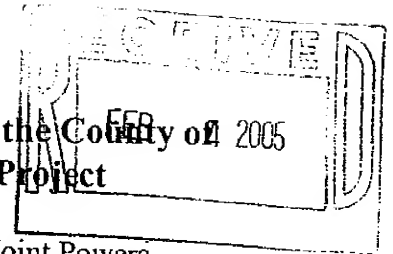


1 **Joint Powers Agreement between the City of Santa Fe and the County of**
2 **Santa Fe Governing the Buckman Direct Diversion Project**



3
4 This Joint Powers Agreement ("Agreement") is entered into pursuant to the Joint Powers
5 Agreement Act, NMSA 1978, Section 11-1-1 through 11-1-7 by and is entered into by and
6 between the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico and
7 the County of Santa Fe ("County"), a political subdivision of the State of New Mexico, as of the
8 effective date defined below.
9

10 **Recitals**

11
12 **WHEREAS**, the County and City will continue to cooperate on the funding, permitting and
13 construction of the proposed BDD Project to provide regional water resources; and
14

15 **WHEREAS**, the City and County recognize that the use of SJCP water will be directly available
16 to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the
17 future; and
18

19 **WHEREAS**, in a joint meeting of the City of Santa Fe Council and County of Santa Fe Board of
20 Count Commissioners held on October 7, 2004, the respective governing bodies approved the
21 Regional Water Resource and Buckman Direct Diversion Principles of Agreement; and
22

23 **WHEREAS**, this Joint Powers Agreement is intended to begin implementation of those
24 provisions of the October 7, 2004 Agreement concerning the Buckman Direct Diversion Project;
25 and,
26

27 **WHEREAS**, it is in the best interest of the citizens of the City and the County that the City and
28 the County jointly undertake to plan, fund, construct, operate, manage and own the Buckman
29 Direct Diversion Project.
30

31 **NOW**, therefore, upon the mutual consideration described by this Agreement, including the
32 covenants and promises contained herein, the adequacy of which is acknowledged by the parties,
33 the County and City agree as follows:
34

35 **Definitions.** Capitalized words or phrases used in this Agreement, as defined below, shall have
36 the following meanings:
37

38 **afy** means acre feet per year.
39

40 **Agreement** means this "Joint Powers Agreement between the City of Santa Fe and the County of
41 Santa Fe Governing the Buckman Direct Diversion Project".
42

43 **BDD Board** means the governing board of directors of the BDD Project as established by the
44 this Agreement.
45

1 **BDD Project** means the planned Buckman Direct Diversion Project which will divert surface
2 water from the Rio Grande at Buckman, as described in the draft Environmental Impact
3 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity
4 of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works
5 used to deliver water to the respective Independent Water Systems of the City and County.
6

7 **BOR** means the United States Bureau of Reclamation.
8

9 **Design Build Contract** means a contract entered into between the BDD Board and the Design
10 Build Contractor to design and build the BDD Project pursuant to the City's Purchasing Manual.
11

12 **Design Build Contractor** means the contractor hired pursuant to the Design Build Contract to
13 design and build the BDD Project.
14

15 **Facility Operations and Procedures Agreement (FOPA)** means the agreement between the City,
16 the County and Las Campanas governing the operations and procedures of the BDD Project.
17

18 **Independent Water System** means the respective water works of the City and the County, as
19 such works exist now and as such works may change or expand in the future.
20

21 **ISC** means the New Mexico Interstate Stream Commission.
22

23 **Owners' Consultant** means a consultant specializing in providing professional services to the
24 Project Owners to manage and oversee the design build process on a public water project on
25 behalf of the Project Owners, including, but not limited to, providing all professional services for
26 the Project Owners that are necessary to fully develop, procure, design, construct and initially
27 operate the BDD Project.
28

29 **Owners' Consultant Contract** means the contract between the City and the County as Project
30 Owners and the Owners' Consultant which will be subsequently assigned to the BDD Board.
31

32 **OSE** means the New Mexico Office of the State Engineer.
33

34 **Project Management and Fiscal Services (PMFS) Contract** means a contract between the
35 BDD Board and the Project Manager for the provision of the management and fiscal services as
36 described in Section 12 of this Agreement.
37

38 **Project Manager** means the designated entity that provides the management and fiscal services
39 as required by the PMFS Contract.
40

41 **Project Owners** means the City and County.
42

43 **Regional Entity** means an entity which includes both the City and County that seeks to

1 cooperatively manage water supply and delivery from the BDD Project on a regional basis.
2

3 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605 acre-feet
4 per year acquired by the City and the County under contract with the U.S. Bureau of
5 Reclamation, dated November 23, 1976, and as it may be amended, renewed, converted or
6 replaced.
7

8 **Sangre de Cristo Water Division** means the operating water utility division of the City's
9 Independent Water System.
10

11 **Water Resources Agreement** means the "Water Resources Agreement between the City of
12 Santa Fe and the County of Santa Fe", executed contemporaneously with this Agreement.
13

14 Agreement 15

16 **1. Purpose.** The purpose of this Agreement includes the formation of the BDD Board to oversee
17 the BDD Project and the establishment of the terms and conditions governing the ownership,
18 planning, procurement, financing, permitting, design, construction, operations, allocation of
19 capacity and management of the BDD Project.
20

21 **2. Ownership.** The City and the County shall each own fifty percent (50%) of the BDD Project,
22 subject to Section 15 of this Agreement.
23

24 **3. Establishment of the BDD Board.** The City and the County hereby establish the BDD Board
25 and delegate to it all powers, necessary or implied, to oversee the planning, procurement,
26 financing, permitting, design, construction, operations and management of the BDD Project. The
27 BDD Board's responsibilities for operations and management include the duty and authority to
28 maintain, repair, replace and obtain approvals for the BDD Project.
29

30 **4. Responsibilities and Duties of the BDD Board.** It shall be the duty of the BDD Board to
31 divert, treat, transmit and deliver Rio Grande surface water by means of the BDD Project to the
32 City and the County Independent Water Systems in accordance with their respective diversion
33 allocations and delivery demands. Such powers and duties are subject to the limits and
34 conditions provided in this Agreement.
35

36 The BDD Board shall manage the Owners' Consultant Contract and supervise the performance
37 of the Owners' Consultant, as provided in Section 10 of this Agreement.
38

39 The BDD Board shall enter into the Design Build Contract and supervise performance of the
40 Design Build Contractor, as provided in Section 11 of this Agreement.
41

42 The BDD Board shall enter into the Project Management and Fiscal Services (PMFS) Contract
43 and supervise the performance of the Project Manager, as provided in Section 12 of this

1 Agreement.

2
3 The BDD Board shall enter into the Facility Operations and Procedures Agreement (FOPA) with
4 Las Campanas, as provided in Section 15 of this Agreement.
5

6 **5. Appointment of BDD Board Members and Chairperson.** The BDD Board shall be
7 managed by a board of directors organized and comprised as follows:
8

9 Two members of the Governing Body of the City of Santa Fe shall be appointed by the City's
10 Mayor with the approval of the Governing Body. The members shall serve for such a period as
11 may be determined from time to time by the Mayor with the approval of the Governing Body.
12 The Mayor may appoint, with the approval of the Governing Body, a third member of the
13 Governing Body to serve as an alternate in the event one of the two regular members is unable to
14 attend a BDD Board meeting.
15

16 Two members of the Board of Santa Fe County Commissioners shall be appointed and approved
17 by the Board of Santa Fe County Commissioners. The members shall serve for such period as
18 may be determined from time to time by the Board of Santa Fe County Commissioners. The
19 Board of Santa Fe County Commissioners may appoint a third member of the Board of Santa Fe
20 County Commissioners to serve as an alternate in the event one of the two regular members is
21 unable to attend a BDD Board meeting.
22

23 One citizen member at large shall be appointed by a majority vote of the four other members for
24 a two-year term and who may be re-appointed without limit. Prior to the end of any term, the
25 citizen member may only be removed by unanimous action of the four other members. In the
26 event that the citizen member's term expires but a citizen member has not been appointed for the
27 following term, the citizen member shall continue to serve as a member of the BDD Board for an
28 additional sixty (60) days. After the expiration of the citizen member's term and if the BDD
29 Board has not appointed a citizen member within the sixty-day period, the Chief Judge of the
30 First Judicial District Court shall appoint that member.
31

32 Upon the expiration of a term of office or on account of death, illness, resignation, or three
33 consecutive absences from duly called meetings, the entity that appointed the director shall
34 thereupon appoint a director to the new term or to complete the term vacated. The BDD Board
35 shall be duly constituted and established upon appointment of the citizen member and election of
36 the chairperson and chairperson pro-tempore. The BDD Board shall annually elect a chairperson
37 and a chairperson pro-tempore for the purposes of holding meetings, doing business and
38 executing documents as required and consistent with the terms of this Agreement.
39

40 Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-
41 Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this
42 Agreement.
43

1 **6. Meetings of the BDD Board.** The BDD Board shall have at least one regularly scheduled
2 meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A
3 quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board
4 members is present. A simple majority of BDD Board members who are present at a duly called
5 meeting of the BDD Board at which a quorum is present shall act for the BDD Board with
6 respect to all matters brought before the BDD Board at that meeting.
7

8 **7. BDD Board Annual Budget.** Each year the BDD Board shall prepare and recommend an
9 annual budget, which shall be finalized for recommendation after a public hearing and shall not
10 be formally adopted or implemented unless and until it is approved by each of the governing
11 bodies of the City and the County. If, for any reason, the BDD Board fails to have an approved
12 annual budget for a fiscal year as of the first day of that year, the annual budget for the prior
13 fiscal year shall be effective for the subsequent fiscal year until such time as an annual budget is
14 adopted and approved for the subsequent fiscal year.
15

16 **8. BDD Project Financing.** The BDD Board may apply for grants, loans, financial guarantees,
17 and other financial assistance from private or public sources. The BDD Board shall not obligate
18 itself by loan or encumber the BDD Project or any other real property or assets held or owned by
19 it, unless and until each of the governing bodies of the City and the County approves such loan or
20 encumbrance.
21

22 **9. Limits of BDD Board Authority.** The BDD Board's authority and duties do not encompass
23 the distribution of water to customers, the assessment or collection of water charges, the
24 regulation of water use by customers or the ownership, acquisition or permitting of use of water
25 rights or contract water rights. Those functions, and any others not delegated by this Agreement,
26 are reserved to the City and County in the supervision and operation of their respective
27 Independent Water Systems.
28

29 **10. Owners' Consultant.** The City and the County agree to execute the Owners' Consultant
30 Contract as expeditiously as possible. Once the BDD Board is established, the City and the
31 County shall assign to the BDD Board the authority to approve any necessary changes in the
32 Owners' Consultant Contract. The Owners' Consultant shall thereafter report to the BDD Board.
33 The day-to-day oversight of the Owners' Consultant will be performed by the Project Manager,
34 Section 12, of this Agreement.
35

36 **11. Design Build Contractor.** The City and the County delegate to the BDD Board the authority
37 to enter into the Design Build Contract. The BDD Board shall have the authority to approve any
38 necessary changes in the Design Build Contract. The Design Build Contractor shall report to the
39 BDD Board. The day-to-day oversight of the Design Build Contractor shall be performed by the
40 Project Manger, Section 12 of this Agreement.
41

42 **12. Project Management and Fiscal Services.** The City and the County delegate to the BDD
43 Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible

1 for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the
2 design and construction of the BDD Project; (3) the operation and management the BDD Project
3 after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the
4 provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for
5 the Owners' Consultant Contract, Design Build Contract, and all other fiscal services related to
6 the design, procurement, construction, operation and maintenance of the BDD Project, including
7 managing all revenues, maintaining all accounts, procuring necessary property, goods and services,
8 and receiving and disbursing all funds. The Project Manager will report directly to the BDD
9 Board, and the BDD Board shall have authority to supervise the performance of the Project
10 Manager.

11
12 The PMFS Contract shall contain a fee schedule for the fiscal agent services to be provided under
13 the PMFS Contract. It shall, at a minimum, specify that funds of the BDD Project shall be held in
14 one or more separate accounts and shall not be commingled with the funds of any of the parties to
15 this Agreement, and shall specify that the Project Manager may invest its funds only in accordance
16 with any applicable laws of the State of New Mexico governing the investment of public funds.
17 The PFMS Contract shall specify the types and threshold amounts of expenditures that require
18 approval of the BDD Board in advance.

19
20 **13. Designation of Project Manager.** The City and County agree that the Sangre de Cristo
21 Water Division will be the initial Project Manager and that the BDD Board shall enter into the
22 PMFS with the City.

23
24 Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de
25 Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board
26 shall have authority to enter into a new PMFS Contract with any one of the following: (1) Sangre
27 de Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity.

28
29 After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term
30 of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the
31 functions performed under the PMFS Contract may continue to be combined in a single new
32 PMFS Contract or may be separated into two or more replacement PMFS Contracts.

33
34 **14. BDD Project Capacity Allocation.** In accordance with the Environmental Impact Statement
35 for the BDD Project the 8,730 afy of diversion capacity of the BDD Project shall be allocated as
36 follows: 5,230 afy to the City, 1,700 afy to the County, and 1,800 afy to Las Campanas. Each
37 entity's diversions shall be based upon its own water right or contract right and each entity is
38 responsible for acquisition and maintenance of its own water rights.

39
40 **15. Inclusion of Las Campanas.** The 1,800 afy allocation of BDD Project capacity reserved for
41 Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures
42 Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as
43 part of the Facility Operations and Procedures Agreement.

1
2 **16. Cost Sharing for Design and Construction Costs for the BDD Project.** The City and
3 County agree to contribute \$30 million each to design and construct the BDD Project. The City
4 and the County shall disburse funds in accordance with the annual budget duly approved by
5 them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the
6 BDD Board, and contributions to support the budget shall be incorporated in each of the parties'
7 annual budgets.
8

9 The City and the County agree to seek additional State and Federal assistance to help pay for the
10 costs of the Project. As part of the Facility Operations and Procedures Agreement, the City and
11 County intend that Las Campanas will pay for its proportionate share of that part of the system
12 allocated to its use (the diversion structure, sediment pond and related infrastructure). After
13 applying the City's and County's combined \$60 million contribution, all state and federal
14 financial assistance, the contribution of Las Campanas and any other funding, the City and
15 County agree to contribute equally to pay the balance of design and construction costs.
16

17 An accounting of the City and County contributions already made towards Project costs that shall
18 be credited towards the City and County's respective contribution requirements shall be made a
19 part of the PMFS Contract.
20

21 **17. Cost Sharing for Operation and Maintenance Costs for the BDD Project.** All reasonable
22 and necessary costs and expenses attributable to the operation and maintenance of the BDD
23 Project shall be included by the BDD Board in its annual budget and shall be apportioned among
24 the parties and Las Campanas. The BDD Board shall determine periodically which costs are
25 fixed and which are variable or proportionate.
26

27 The costs of operating, maintaining and repairing the BDD Project that can be attributable to
28 each party's variable or proportionate share of water deliveries (such as electrical costs) shall be
29 shared according to each party's proportionate share of water deliveries.
30

31 The costs of operating, maintaining and repairing the Project that are fixed or capital costs and
32 that are attributable to the facility as a whole shall be shared equally by the City and County after
33 applying any contribution by others, including Las Campanas.
34

35 **18. Term.** The date on which this Agreement shall be effective shall be the date on which this
36 Agreement is approved. This Agreement shall become effective upon approval of the
37 Department of Finance and Administration, State of New Mexico. This Agreement shall be in
38 effect from the effective date through the date of termination, as provided in Section 19 of this
39 Agreement.
40

41 **19. Termination.** The parties may terminate this Agreement only by the formal action of the
42 Governing Body of the City of Santa Fe and the Board of County Commissioners.
43

1 If upon termination of this Agreement, a successor public entity is authorized to carry on the
2 activities of the BDD Board and assume its rights, obligations and responsibilities, then such
3 rights, obligations and responsibilities shall be transferred to the successor public entity in
4 accordance with law. If upon termination of this Agreement and a successor public entity is not
5 authorized to carry on the activities of the BDD Board, then any property, rights and assets of the
6 BDD Board (other than the BDD Project) shall be divided among the parties according to the
7 respective contributions (ownership interests) of the parties.
8

9 **20. Strict Accountability, Records, Audits, Reports.** As provided in NMSA 1978 Section 11-
10 1-4 (as amended), the BDD Board and the parties hereto shall be strictly accountable for all
11 receipts and disbursements, and shall maintain adequate, complete and correct records and
12 statements pertaining to receipts, disbursements, and other financial matters pertaining to the
13 Project. Each year, the Project Manager shall cause an annual audit of the BDD Project to be
14 performed by an independent certified public accountant; the audit shall be provided to each of
15 the City and the County and shall be made available to the public. The records and statements
16 prepared by the BDD Board pursuant to this paragraph shall be open to inspection at any
17 reasonable time by the parties hereto, their accountants and agents. Within ninety (90) days after
18 the end of each fiscal year, the BDD Board shall prepare and present to the parties a comprehensive
19 annual report of the BDD Board's activities and finances during the preceding year. The BDD
20 Board shall prepare and present such reports as may be required by law, regulation or contract to
21 any governmental agency, and shall also render to the parties hereto, at reasonable intervals, such
22 reports and accounting as the parties hereto may from time to time request.
23

24 **21. Amendment.** This Agreement may not be modified, amended, supplemented or rescinded
25 except by a written agreement executed by each of the City and the County in the manner in
26 which this Agreement was executed by the City and the County.
27

28 **22. Severability.** The provisions of this Agreement shall be interpreted and construed so as to be
29 consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void,
30 voidable or otherwise unenforceable the remainder of this Agreement shall continue in full force
31 and effect and only so much of this Agreement as is necessary shall be separated herefrom and
32 made unenforceable.
33

34 **23. Insurance.** The BDD Board shall obtain and carry public liability insurance coverage
35 (including directors and officers coverage) consistent with its responsibilities as a public entity
36 under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* and with combined
37 single limits of no less than \$1,000,000. The BDD Board shall carry and maintain fire and
38 extended insurance coverage on all of the BDD Project buildings, structures and improvements,
39 and upon all of the contents and other personal property. The Public Liability insurance policy
40 shall provide occurrence-based coverage against losses arising out of all operations conducted
41 on the premises, contractual liability coverage, crime, automobile, directors' and officers'
42 coverage, and other appropriate coverages. The BDD Board shall also carry and maintain
43 workers' compensation insurance (or create and administer a program of self insurance approved

1 by the Director of the Workers' Compensation Administration) that complies with the
2 requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et
3 seq., if applicable. The expense of obtaining and maintaining the required insurance shall be
4 included in the annual budget of the BDD Board. The insurance provided for under this Section
5 shall be maintained in full force and effect throughout the duration of this Agreement. A copy of
6 any insurance policy shall be provided to any party at the party's request.
7

8 **24. Liability.** No party hereto shall be responsible for liability incurred as a result of one of the
9 other party's acts or omissions in connection with this Agreement. Any liability incurred in
10 connection with this Agreement shall be subject to the privileges and immunities of the New
11 Mexico Tort Claims Act (as amended).
12

13 **25. Third Party Beneficiary.** The Parties to this Agreement do not and do not intend to create
14 in the public, any member thereof, or any person, any rights whatsoever such as, but not limited
15 to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to
16 maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.
17

18 **26. Dispute Resolution.** The City and County agree to use any and all methods of dispute
19 resolution, up to and including binding arbitration, to resolve any conflicts arising under this
20 Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall
21 be first discussed by representatives of each party having the authority, if necessary, to bind the
22 party that they represent. Such representatives shall use their best efforts to amicably and
23 promptly resolve the dispute. If the parties are unable to resolve the dispute through informal
24 mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving
25 rise to the dispute, either party may give notice to the other party that the dispute is to be
26 submitted to binding arbitration. Any dispute requiring notice shall be reported to the
27 next meeting of the respective City and County governing bodies. Such notice shall contain the
28 name of a proposed arbitrator, and in the event the other party does not agree with the proposed
29 arbitrator, the model guidelines of the American Arbitration Association shall be used to select
30 an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of
31 the award consistent with New Mexico state law. Within 60 days of notice an arbitrator shall be
32 appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's
33 award shall be binding on the parties.
34

35 **27. Entire Agreement.** This Agreement contains the Entire Agreement between the City and
36 County with regard to the matters set forth herein.
37

38 **28. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the
39 parties and their respective representatives, successors, and assigns.
40

41 **29. Counsel.** The City and County acknowledge that they have freely entered into this
42 Agreement with the advice of their respective legal counsel.
43

1 **30. Other Documents.** The parties agree to execute such further and other agreements as
2 reasonably may be required from time to time to carry out the provisions of this Agreement.
3

4 **31. Law.** The laws of the State of New Mexico shall govern this Agreement.
5

6 **32. Notices.** Any notice, demand, request, or information authorized or related to this
7 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
8 delivered or faxed as follows:
9

10 **To the City:** Director of the Sangre de Cristo Water Division
11 City of Santa Fe
12 PO Box 909
13 Santa Fe, NM 87501
14 Phone: 955-4200
15 Fax: 955-4352
16

17 **With a copy to:** City Manager
18 City of Santa Fe
19 PO Box 909
20 Santa Fe, NM 87501
21 Phone: 955-6509
22 Fax: 955-6683
23

24 City Attorney
25 City of Santa Fe
26 PO Box 909
27 Santa Fe, NM 87501
28 Phone: 955-6511
29 Fax: 955-6748
30

31 **To the County:** Santa Fe County Utilities Director
32 Santa Fe County
33 205 Montezuma
34 Santa Fe, N.M. 87505
35 Phone: 986-6210
36 Fax: 992-8421
37

38 **With a copy to:** County Manager
39 Santa Fe County
40 P.O. Box 276
41 Santa Fe, N.M. 87504
42 Phone: 986-6200
43 Fax: 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6279
Fax: 986-6362

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

Chairman,
Board of Santa Fe County Commissioners

1-12-05
Date

Approved as to form
Santa Fe County Attorney

1-11-05
Date

Santa Fe County Clerk

1/11/05
Date

Mayor

1-15-05
Date

City of Santa Fe Council

Approved as to form

City of Santa Fe Attorney

1/14/05
Date

City of Santa Fe Clerk

1-18-05
Date

THIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico

Department of Finance Administration

By: Dannette K Burch

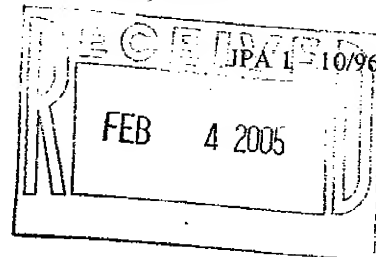
Date: 3/7/05

2/3/7/05



DFA Office of the Secretary
Bataan Memorial Bldg., Suite 180
Santa Fe, New Mexico 87501
(505) 827-4985

DEPARTMENT of FINANCE and ADMINISTRATION (DFA)
JOINT POWERS AGREEMENT (JPA) BRIEF



Agencies must complete and transmit this form along with all backup documentation to the DFA.

PRIMARY PARTY: Santa Fe County

SECONDARY PARTY: The City of Santa Fe

OTHER PARTY: _____

CONTACT NAME: Stephen C. Ross

PHONE: 986-6279

CONTACT ADDRESS: _____

DOCUMENTS ENCLOSED:

- ☒ JPA
☐ JPA Amendment
☐ Purchase Document
☐ Written Justification
☐ Other _____

AMOUNT:

Federal Funds	\$ <u>0</u>
General Funds	\$ <u>0</u>
Other State Funds	\$ <u>0</u>
Local Gov. Funds	\$ <u>60,000*</u>
Total	\$ <u>60,000*</u>

*or 50/50 share on construction costs after federal, state, and other assistance.

PURPOSE: To establish the Buckman Direct Diversion Board, and to plan, finance, design, construct, operate and manage the Buckman Direct Diversion Project

TERM: From: date of DFA approval To: date of termination (presumptively perpetual)
FOR AN AMENDMENT, LIST THE ORIGINAL JPA EXPIRATION DATE: N/A

Statutory Requirements - Agencies must check each blank certifying to DFA that JPA:

- yes jointly exercises a power common to the parties (Transferring funds from one agency to another does not constitute the joint exercise of power.);
yes clearly specifies its purpose;
yes establishes the manner in which the joint power will be exercised;
yes provides for strict accountability of all receipts and disbursements;
yes addresses disposition, division, distribution and ownership of any property acquired as the result of the joint exercise of power; and
yes specifies that any surplus money shall be returned in proportion to the contributions made.

Other Requirements - Agencies must enter Y (Yes), N (No), or N/A (Not Applicable) to each of the following:

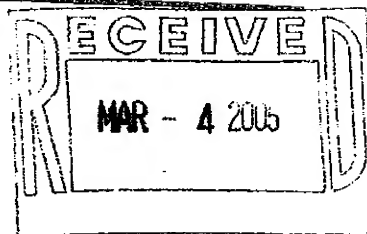
- yes Does the JPA or amendment have original signatures executed by authorized officers, employees or other representatives empowered to bind their respective entities?
yes Are all exhibits referred to in the JPA attached?
N/a Does the JPA provide for the expenditure or transfer of public funds by a state agency? (All public money must be budgeted.)
no Does the JPA provide for the transfer of local, state or federal funds to a state agency? If the answer is yes, cite or attach the legislative authority permitting the receiving state agency to increase its budget from such a transfer.
no If the JPA or amendment start date is prior to the date submitted to DFA or, if the original JPA has expired, is a justification letter requesting retroactive approval attached? (Letter must be signed by one of the parties.)
yes Has the JPA or amendment been reviewed by legal counsel? If yes, state who _____

[Signature]
AGENCY HEAD SIGNATURE

County Attorney
TITLE



Secretary Jimenez
Department of Finance and Administration
Bataan Memorial Building
Santa Fe, NM 87503



Re: City of Santa Fe - Santa Fe County
Joint Powers Agreement for the Buckman Direct Diversion

Dear Mr. Jimenez,

Judy Amer of your office suggested I write and explain the references to Las Campanas in above-referenced Agreement.

The proposed Joint Powers Agreement implements a project of the City of Santa Fe and Santa Fe County to jointly construct, operate and maintain the Buckman Direct Diversion. The \$120 million project will divert water from the Rio Grande River through a diversion structure and settling facility, through pipelines to the Caja del Rio to a water treatment plant, and then to City and County residents. The water to be diverted is either native water or San Juan-Chama Project water under lease to the City of Santa Fe, Santa Fe County, and Las Campanas pursuant to State Engineer approval.

The Buckman Direct Diversion project is incredibly important to our community, and its importance is underscored by the recent drought that has plagued the area. Local groundwater resources are over committed and may not be able to meet needs on a sustainable basis. The agreement that was reached by the City and County brings Rio Grande water to our residents, and it is hoped that this will relieve the burden on local resources in times of drought. The project has obvious implications for the public health, safety and welfare. The Agreement before you represents the culmination of a 17 year effort to find a means to address our community's water needs in a holistic, sensible manner.

The project will be a government project, and will have a private partner. That private partner, Las Campanas LLC, is not a signatory to the JPA. Las Campanas is a limited liability corporation and developer of the Las Campanas subdivision on the City's west side. Las Campanas will make an investment in the facilities to be constructed and will receive water deliveries pursuant to a Facility Operations and Procedures Agreement that is being developed. The parties have already developed principles to guide the drafting of the agreement, and the agreement is expected to be completed soon. Las Campanas will construct, at its own expense, a pipeline to transport raw water to its facilities, and will be responsible for any necessary treatment.

The JPA fundamentally establishes the BDD Board to oversee the construction and implementation of the Buckman Direct Diversion in accordance with § 11-1-1 NMSA, the Joint Powers Act. It is essential to the local governmental entities that a JPA-created Board oversee the crucial work of constructing this water resource facility. The federal government, on whose property the proposed diversion structure will be placed, will only issue a single permit for river diversions. That means that if the City and County did not partner to some extent with Las Campanas, the entire project could be put in jeopardy if multiple applications for diversion structures were filed. That partnership will be represented in the Facility Operations and Procedures Agreement. In conclusion, the JPA is an essential step in providing a governance structure for the local government entities and the operating agreement to follow will detail the expenditures and water deliveries to the private partner.

I hope this is helpful in your review of the Agreement. If you have any questions, please call Stephen Ross, County Attorney, at 986-6279 or Kyle Harwood, Assistant City Attorney at 955-6502.

Sincerely,

Michael D. Anaya
Chairman

The Board of County Commissioners of Santa Fe County

Larry A. Delgado
Mayor
City of Santa Fe

**Amendment 1
to the Joint Powers Agreement between the City of Santa Fe and the County
of Santa Fe Governing the Buckman Direct Diversion Project**

This Amendment 1 to the Joint Powers Agreement (hereinafter referred to as "Amendment 1") is entered into pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7 by and between the City of Santa Fe (hereinafter referred to as "the City"), a municipal corporation of the State of New Mexico, and the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, effective as of later of the date of last signature below.

Recitals

WHEREAS, the County and City have executed the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project (hereinafter referred to as "the JPA"), which became effective on March 7, 2005 when approved by the Department of Finance Administration, State of New Mexico; and

WHEREAS, the City and County desire to further clarify cost sharing and amend provision concerning the required signatories of the PMFSA and other technical issues; and

WHEREAS, the parties hereto desire to enter into an amendment to the JPA and to specify herein their mutual agreements and understandings.

NOW, therefore, the County and City agree, as follows:

1. Changes to the Cost Sharing provision. *JPA Section 17. Cost Sharing for Operation and Maintenance Costs for the BDD Project*, shall be and hereby is amended, as follows.

17. Cost Sharing for Operation and Maintenance Costs for the BDD Project. All reasonable and necessary costs and expenses attributable to the operation and maintenance of the BDD Project shall be included by the BDD Board in its annual budget and shall be apportioned among the parties and Las Campanas. The apportionment of such costs shall be determined in the Facility Operations and Procedures Agreement (FOPA) executed by the County, the City and Las Campanas.

Paragraph 2, deleted.

Paragraph 3, deleted.

1 **2. Changes to the JPA Definitions.** *JPA Definition for the Project Management and Fiscal*
2 *Services (PMFS) Contract*, shall be and hereby is amended as follows.
3

4 **Project Management and Fiscal Services Agreement (PMFSA)** means a
5 contract reviewed and recommended by the BDD Board and executed between the
6 City, the County and the Project Manager for the provision of the management,
7 fiscal services and project financing as described in *JPA Section 12. Project*
8 *Management and Fiscal Services*.
9

10 **3. Changes to the Responsibilities and Duties of the BDD Board.** *JPA Section 4.*
11 *Responsibilities and Duties of the BDD Board (paragraph 4, lines 42 and 43)*, shall be and
12 hereby is amended as follows.
13

14 Upon the review and recommendation of the BDD Board, the City, the County
15 and the Project Manager shall enter into the PMFSA. The BDD Board shall
16 supervise the performance of the Project Manager, as provided in *JPA Section 12.*
17 *Project Management and Fiscal Services*.
18

19 **4. Changes to the Responsibilities and Duties of the BDD Board.** *JPA Section 4.*
20 *Responsibilities and Duties of the BDD Board (paragraph 5, lines 3 and 4)*, shall be and hereby
21 is amended as follows.
22

23 Upon the review and recommendation of the BDD Board, the City, the County
24 and Las Campanas shall enter into the FOPA.
25

26 **5. Changes to Project Management and Fiscal Services.** *JPA Section 12. Project*
27 *Management and Fiscal Services*, shall be and is hereby amended, as follows.
28

29 Upon the review and recommendation of the BDD Board, the City, the County
30 and the Project Manager shall enter into the PMFSA. The PMFSA shall provide
31 for management, fiscal services and project financing of the BDD Project. Under
32 the PMFSA, the Project Manager shall be responsible for: (1) obtaining the
33 environmental approvals necessary to construct and operate the BDD Project; (2)
34 the design and construction of the BDD Project; (3) the operation and
35 management of the BDD Project and completion of the Owners' Consultant
36 Contract and the Design Build Contract; (4) providing staffing to the BDD Board;
37 (5) providing fiscal services and serving as the procurement agent for the BDD
38 Project, the Owners' Consultant Contract, the Design Build Contract, and all other
39 fiscal services related to the design, procurement, construction, operation and
40 maintenance of the BDD Project, including managing all revenues, maintaining
41 all accounts, procuring necessary property, goods and services, and receiving and
42 disbursing all funds. The PMFSA shall provide that the Project Manager will

1 report directly to the BDD Board, and the BDD Board shall have authority to
2 supervise the performance of the Project Manager.
3

4 The PMFSA shall contain a fee schedule for the fiscal agent services to be
5 provided under the PMFSA. It shall, at a minimum, specify that funds of the BDD
6 Project shall be held in one or more separate accounts and shall not be commingled
7 with the funds of any of the parties to this JPA, and shall specify that the Project
8 Manager may invest its funds only in accordance with any applicable laws of the
9 State of New Mexico governing the investment of public funds. The PMFSA shall
10 specify the types and threshold amounts of expenditures that require approval of
11 the BDD Board in advance.
12

13 **6. Changes to Designation of Project Manager.** *JPA Section 13. Designation of Project*
14 *Manager shall be and is hereby amended, as follows.*
15

16 The City and County agree that the Sangre de Cristo Water Division will be the
17 initial Project Manager and that upon the review and recommendation of the BDD
18 Board, the City, the County and the Project Manager shall enter into the PMFSA.
19

20 Unless terminated sooner by the City, the County and the BDD Board, for cause,
21 the PMFSA with the Sangre de Cristo Water Division will terminate on December
22 1, 2015. Upon termination, the City, the County and the BDD Board shall have
23 authority to enter into a new PMFSA with any one of the following: (1) Sangre de
24 Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional
25 Entity.
26

27 After 2015, the new PMFSA shall be reviewed by the City, the County, and the
28 BDD Board at the end of the term of the new PMFSA, or every seven years,
29 whichever occurs first. After 2015, the functions performed under the PMFSA
30 may continue to be combined in a single new PMFSA or may be separated into
31 two or more replacement PMFSAs.
32

33 **7.** No other changes are made by this amendment other than those specifically described above.
34

35 **IN WITNESS WHEREOF**, each of the City of Santa Fe, New Mexico, and the Board of
36 County Commissioners of Santa Fe County, New Mexico, has caused this Agreement to be
37 executed and delivered by its duly authorized representatives as of the date specified below.
38

39 Recommended to the County of Santa Fe Commission and City of Santa Fe Council
40
41

42 _____
Chair, Buckman Direct Diversion Board / Date

BDD JPA Amendment 1

August 30, 2006

Page 3 of 6

1
2 **THE BOARD OF COUNTY COMMISSIONERS OF**
3 **SANTA FE COUNTY**
4

5
6
7 By: _____

8 Harry Montoya, Chair
9

10 **ATTEST:**

11
12
13 _____
14 Valerie Espinosa, County Clerk
15

16 Approved as to form:

17
18 _____
19
20 Stephen C, Ross, County Attorney
21
22

1 Approved

2

3

4 David Coss
Mayor, City of Santa Fe Council / Date

5

6

7 Approved as to Form

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9

10 K. S. Hand, C.A., 10.16.06
City of Santa Fe Attorney's Office / Date

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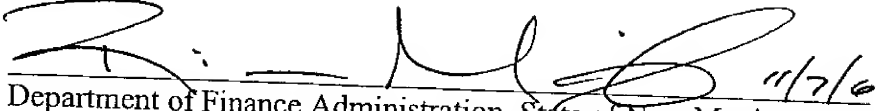
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Yolanda Y. Nigro 10-20-06
City of Santa Fe Clerk / Date
comty 9/27/06

Paula P. Paving 10/14/06
City of Santa Fe Finance / Date

1
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4
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Approved:


Department of Finance, Administration, State of New Mexico / Date

AND

11/13